

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARCO RIVERA,

Defendant.

Case No. 3:03-cr-00109-RRB

ORDER

On February 19, 2008, Marco Rivera, representing himself, wrote a letter to the Court inquiring as to whether he is eligible for re-sentencing under 28 U.S.C. § 3582(c), in light of the new sentencing guidelines with respect to "crack" cocaine.¹ The Court cannot answer such letters from litigants, and cannot give legal advice. Instead, a request for action must be made in the form of a motion.

As recently explained by the Supreme Court in *Kimbrough v. United States*, the guidelines were changed, effective November 1, 2007, to reduce "the base offense level associated with each quantity of crack by two levels."² The Supreme

¹ See Docket No. 274.

² *Kimrough v. United States*, 128 S.Ct. 558, 569 (2007), citing Amendments to the Sentencing Guidelines for United States Courts, 72 Fed.Reg. 28571-28572 (2007).

Court noted, at the time, that "[t]he Commission has not yet determined whether the amendment will be retroactive to cover defendants like Kimbrough."³ Since that case was decided, it has been determined that the guidelines will become retroactive on March 3, 2008.⁴ Therefore, Mr. Rivera may file a motion requesting re-sentencing, if he believes this action is appropriate, on or after March 3, 2008.

IT IS THEREFORE ORDERED that:

1. Mr. Rivera may file a motion for re-sentencing under 28 U.S.C. § 3582(c), on or after **March 3, 2008**.
2. The Clerk of Court is directed to send this Court's form USDCA 40, Application for Appointment of Counsel, and a form CJA 23, Financial Affidavit, to Mr. Rivera with a copy of this Order. Mr. Rivera may file an application for counsel with a motion for re-sentencing.

DATED this 20th day of February, 2008, at Anchorage, Alaska.

/s/ RALPH R. BEISTLINE
United States District Judge

³ *Id.* at n. 11.

⁴ See *United States v. Ross*, 511 F.3d 1233, 1237 n. 2 (9th Cir. 2008) ("On March 3, 2008, time reductions for crack cocaine offenders sentenced prior to November 1, 2007, will be authorized pursuant to 18 U.S.C.A. § 3582(c) (2)").